

**From:** Scott Sayre  
**To:** Microsoft ATR  
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**Subject:** U.S. vs. Microsoft

As a period for public comments in the above case has been allotted, the following are my views:

#### Microsoft Is a Monopolist.

Once the Windows operating system (OS) became the dominant platform for computing, Microsoft clearly used its position to bully IBM, to coerce PC clone manufacturers, to dictate to Apple, to stifle Netscape, etc., subsidizing it's efforts with the windfall profits from it's OS. This is clear to the most casual observer, as it was to Judge Jackson, and the Court of Appeals.

#### On-Going Monopolist Behavior.

In the absence of a swift penalty, Microsoft continues to flout its monopoly position. It's most recent OS, Windows XP, has integrated even more software, including an internet browser, messaging, e-mail, photo, and video functions, all offered for free, virtually eliminating the possibility for real competition in these areas. Windows continues to be plagued almost daily with security flaws, viruses, and other bugs, yet the structural barriers to competition insulate Microsoft from acting seriously on these critical issues. Apple Computer and the Linux distributors, for example, cannot move against the enormous inertia of the Wintel marketplace. In order to win in such an environment, competing products must be not just good, but massively superior, a nearly impossible task for small companies to accomplish at the OS level.

#### The Public Interest Has Been Damaged

Microsoft has argued that it is the dominant software purveyor simply because the public prefers it's work. Yet courtroom testimony has demonstrated a persistent pattern over the past ten years of using threats and intimidation to secure a position for Microsoft products, by bundling additional software, usually for free, with Windows, rather than through open and free competition. The demise of Netscape's browser and Corel's WordPerfect are the two most obvious examples. Microsoft is pursuing a similar strategy against Real, Intuit, and numerous others at this moment. Clearly, the public would be better served by real choice.

#### An Appropriate Punishment.

The change of administration has apparently caused the Justice Department and a number of States to shrink from seeking a substantial penalty, something more firm than the toothless consent decree issued in a previous judgment several years ago. However, the remaining nine states are exactly right to pursue severe sanctions, preferably ones that do not need on-going supervision to succeed. Here are some suggestions:

- 1) The PC manufacturing community must be freed from some of the most onerous provisions of their agreements with Microsoft to use Windows, such as paying a license fee even for computers sold without any OS, or some other OS, pre-installed.
- 2) Windows must be compartmentalized, so that the PC manufacturers, and the general public, have the ability to freely chose which browser, messenger, e-mail, etc., software they want to install. Microsoft has fretted publicly that these items are merely "features" of their OS, and are not separable, but this is clearly a dodge, a device to avoid putting their software up for competition on an equal footing. Dividing Microsoft into pieces is the only certain way to accomplish this. Supervision by any select group will most likely be evaded, as has happened before.
- 3) The API's, or hooks by which third party software companies link their work to Windows, must be made entirely public. It is common knowledge that Microsoft creates hidden API's, known only to its employees, for use with it's other software products, giving it's own work tremendous advantages over that of competing firms.
- 4) Some punitive monetary damages should be assessed, to strip the company of some of the huge economic power it wields to absorb emerging technologies and subvert industry standards. This could be given to the U.S. government as a fine, or as rebates to purchasers of Windows, or both.

Thank you for your consideration.

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